

Title: National Background Check Program for Patient Protection

Section: 6201

State Option

Overview: Section 6201 of the Patient Protection and Affordable Care Act (ACA) establishes a nationwide program to identify efficient, effective, and economical procedures for long term care facilities and providers to conduct background checks on a statewide basis on all prospective direct patient access employees.

The Centers for Medicare and Medicaid Services (CMS) is inviting proposals from all states and U.S. territories to be considered for inclusion in this National Background Check Program, which will be in effect through 2012. Federal matching funds will be available to all states and U.S. territories that meet the requirements. The national program will be evaluated by the HHS Office of Inspector General (OIG). CMS will award a technical support contract to support the states that are selected to participate in the program.

Participating states must guarantee non-federal funds to cover a portion of the cost to conduct the program in their state. CMS will provide a three-to-one match for these funds to each grantee.

The participating state must require fingerprint checks as part of the criminal background check for all direct patient access employees. The participating state must have a plan to implement the program (a) statewide and (b) in all long term care entities specified in Section 6201 of the ACA. The state may phase-in the program over a multi-year period, and the phase-in may be accomplished by geographical location, provider type, or other factors determined by the state, so long as the key provider types identified by CMS are phased-in by the time periods identified.

Participating states must:

- Ensure that the background checks include checks of state criminal history records for all relevant states, and the records of any proceedings that may contain disqualifying information (such as licensing and disciplinary boards and State Medicaid Fraud Control Units);
- Require providers to search the abuse registries of all known states in which the employee lived. The background checks must include Federal Bureau of Investigation (FBI) fingerprint checks;

- Describe and test methods to reduce duplication of fingerprinting including “rap back” capabilities that will include a provision for state law enforcement departments to immediately inform the state of any criminal offenses by the employee that occur following the pre-employment background check. The “rap back” provision requires the state to immediately notify the provider when law enforcement notifies the state that an employee is convicted after the pre-employment background check; and
- Have a procedure for monitoring provider compliance with the national background check program, for providing privacy and security safeguards and providing an independent dispute/appeals process.

Targeted Population: The targeted population is residents and patients of skilled nursing facilities, nursing facilities, home health agencies, hospice care providers, long-term care hospitals, personal care service providers, adult day care providers, residential care providers, assisted living facilities, intermediate facilities for the mentally retarded (ICF/MRs) and “other entities that provide long-term care services, as specified by each participating state.” In Nevada, the State Health Division regulates these facilities and administers the Criminal Background Check Program for the applicable facilities.

Currently, only agencies that provide personal care services in the home and agencies that provide nursing services in the home, ICF/MRs, skilled nursing facilities, residential group facilities and individual residential care homes are required to conduct criminal background checks. The checks are required for employees, independent contractors, administrators, or persons licensed to operate.

Fiscal Impact: In order to participate in this program, a state must guarantee that it will make available non-federal funds to cover a portion of the cost to be incurred to carry out the background check program. These funds may be from any source such as state funds, local funds, bona-fide donations, or health care-related taxes that qualify as permissible sources of the non-federal share in order to obtain federal Medicaid matching funds.

The State Health Division intends to apply for this funding opportunity. The proposal will include two components: (1) developing the infrastructure to allow employee fingerprints to be submitted electronically to the State’s Criminal History Repository; and (2) consolidating all relevant registries in the State to allow for one portal for employers to use to verify whether an employee is already excluded from employment based on a previous background check.

The cost of the proposal is still under development. It is anticipated that CMS will issue a second solicitation in October or November of 2010. An initial solicitation was issued by CMS in July 2010, at which time Nevada did not submit an application.

Applicability to Nevada: Because Nevada was one of the original states that was funded by CMS to develop a criminal background check program, the opportunity with the current funding is to expand beyond a simple, paper-based system that only collects information about excluded employees. With the initial funding, select employers were provided with a means to collect electronic fingerprints; however, the infrastructure was not developed to allow those fingerprints to be submitted electronically to the State's Criminal History Repository. Moreover, the current program operates in a one-way manner in which information comes into the State Health Division, but employers do not call the Division to verify whether a potential employee has already been excluded from employment.

The primary barrier to Nevada pursuing this opportunity is the financial matching requirement. However, there are many benefits to the State's employers in having a more efficient criminal background check system.